



RULES AGENDA: 4-16-2014
ITEM: G.7

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Ash Kalra

SUBJECT: ELECTRONIC CIGARETTE
REGULATION

DATE: April 15, 2014

Approved

Date

4/15/2014

RECOMMENDATION

Direct staff to draft an amendment to city ordinance Title 9 Section 44 that would regulate electronic smoking products and electronic nicotine delivery devices in the same way as traditional tobacco products within the City of San José.

BACKGROUND

As discussed in the memorandum by Council Member Herrera dated April 2, 2014, it is time for San José to join the many dozens of cities and school districts throughout the nation who have taken quick action to regulate the use of products commonly referred to as e-cigarettes. San José has been a leader in protecting the public health of its residents, including strengthening our second-hand smoke policy a couple of years ago to ban smoking in outdoor dining, service lines, and common outdoor areas of multiple-family housing. Now is not the time to relent in protecting our residents from the dangers of both direct and second hand smoke, nicotine and chemical ingestion.

Some would argue that due to the novelty of the products and given the fact there are limited national regulations or studies regarding e-cigarettes that we should relent from moving forward. I believe the opposite is the case when it comes to a product of this nature. Given the open questions and lack of oversight at a federal or state level, it is incumbent on us to take action until studies show e-cigarettes and similar products are completely safe, not wait to react once they are proven detrimental. Plus, despite a state law banning the sales of e-cigarettes to minors, the new "vaping" industry is targeting youth in the same manner that the tobacco industry has targeted our children for decades. There are unique flavors and youth targeting in marketing e-cigarettes in an unregulated manner since the state and national government has been slow to act in putting forward a policy we can follow.

Despite those arguments, the reality is that in recent years, there have been studies on the effects of e-cigarettes. Those who seek to profit from this rapidly growing industry prefer to refer to the products as vaporizers and retailers refer to themselves as "vape" shops. The choice of words is not by accident. It implies that the substance emitted from e-cigarettes is simply water vapor. In reality, there are numerous toxic substances emitted into the air from e-cigarettes aerosol. At least ten chemicals listed as carcinogens and reproductive toxics pursuant to California's Proposition 65 have been identified in mainstream or secondhand e-cigarette aerosol. It has also been shown that these products

have no measurable effect on smoking cessation and even reduces the likelihood of quitting or increases nicotine intake by now allowing smoking in all environments. The evidence has mounted against e-cigarettes to such a great extent that as of January 2, 2014, 108 municipalities and three states include e-cigarettes as products that are prohibited from use in smoke free environments.

Given the fact we have a robust ordinance regulating the use of tobacco and other smoke emitting products in many environments in our city, such as all indoor public spaces and parks, an amendment to our current ordinance simply adding e-cigarettes and all variations of like products to our current regulations should not require excessive staff time or intense evaluation. The only change I would make to the recommendation by Council Member Herrera is to remove the exception for prescription uses. This would make regulation much more challenging. And, the negative impacts of second hand aerosol does not discriminate depending on whether the smoker has a prescription or not. I would urge this Committee and, ultimately, the entire Council to quickly move to ban the use of electronic smoke products in places where we have thankfully become accustomed to a smoke free environment.